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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,685	12/16/2005	Nadim C Moucharafieh	13892US	4043
24116 7590 11/28/2008 BATTELLE MEMORIAL INSTITUTE 505 KING AVENUE COLUMBUS, OH 43201-2693				
EXAMINER SULLIVAN, DANIELLE D				
ART UNIT		PAPER NUMBER		
1616				
MAIL DATE		DELIVERY MODE		
11/28/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/541,685

Applicant(s)

MOCHARAFIEH ET AL.

Examiner

DANIELLE SULLIVAN

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27, 51 and 52 is/are pending in the application.
- 4a) Of the above claim(s) 3, 5, 6, 8-11, 13-16 and 18-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 7, 12, 17, 27, 51 and 52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claims 1-27, 51 and 52 are pending. Claims 1, 2, 4, 7, 12, 17, 27, 51 and 52 are under examination.

Election/Restrictions

Claims 3, 5, 6, 8-11, 13-16 and 18-27 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 8/04/2008.

Applicant's election without traverse of a) methyl oleate, b) monoethanolamine, c) N, N-(dihydroxyethyl) oleylamine and d) N-(phosphonomethyl) glycine (glyphosate) in the reply filed on 8/04/2008 is acknowledged.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 7, 17 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Ward et al. (US 6,093,681).

Ward et al. teach composition comprising 20% glyphosate, Span 80 (surfactant), Tween 20 (polyoxyethylene sorbitol), butyl stearate (fatty acid ester) (Examples FC-1 and F-2).

Claims 1, 2, 4, 7, 17 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Gillespie et al. (US 6,093,680).

Ward et al. teach composition comprising 20% glyphosate, Span 80 (surfactant), Tween 20 (polyoxyethylene sorbitol), methyl oleate (fatty acid ester) (Examples 12-17).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gillespie et al. (US 6,093,680) in view of Iwasaki (5,612,322).

Applicant's Invention

Applicant claims a composition as disclosed above. Claim 12 limits the polar solvent to an amine selected from ethylene diamine, ethanolamine, diethanolamine, triethanolamine and combination thereof.

Determination of the scope and the content of the prior art

(MPEP 2141.01)

The teaching of Gillespie et al. is discussed in above 102(b) rejection.

Ascertainment of the difference between the prior art and the claims

(MPEP 2141.02)

Gillespie et al. do not teach the use an amine as the polar solvent. It is for this reason that Iwasaki is joined.

Iwasaki teaches that monoethanolamine, diethanolamine and triethanolamine are excellent activating agents for biocides in combination with monoesters, particularly polyoxyalkylene alkyl ethers (column 2, lines 5-16). The biocides include glyphosate (column 3, lines 29-31).

Finding of prima facie obviousness

Rationale and Motivation (MPEP 2142-2143)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Gillespie et al. and Iwasaki to utilize an amine, such as monoethanolamine. One would have been motivated to include monoethanolamine because Iwasaki teaches that the compound works as an activating agent in biocidal compositions comprising glyphosate.

Claims 51 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gillespie et al. (US 6,093,680) in view of Iwasaki (5,612,322), and in further view of Kuchikata et al. (US 6,228,807).

Applicant's Invention

Applicant claims a composition as disclosed above. Claims 51 and 52 specifies the polar solvent is monoethanolamine. Claim 51 specify that the amphiphilic material is selected from N, N-(dihydroxyethyl) oleylamine and polyoxyethylene oleyl ether. Claim 52 specifies the material is polyoxyethylene oleyl ether.

Determination of the scope and the content of the prior art

(MPEP 2141.01)

The teachings of Gillespie et al. and Iwasaki are addressed in above 103 rejection.

Ascertainment of the difference between the prior art and the claims

(MPEP 2141.02)

Gillespie et al. and Iwasaki do not teach polyoxyethylene oleyl ether, however, Iwasaki teaches the use of polyoxyalkylene alkyl ethers with activating agents, such as monoethanolamine. It is for this reason that Kuchikata et al. is added.

Kuchikata et al. teach the use of specific surfactants in the formulation of N-phosphonomethylglycine herbicides(column 2, lines 58-65). The surfactants include polyoxyethylene oleyl ether (column 6, line 3).

Finding of prima facie obviousness

Rationale and Motivation (MPEP 2142-2143)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Gillespie et al., Iwasaki and Kuchikata et al. to further include polyoxyethylene oleyl ether. One would have been motivated to include polyoxyethylene oleyl ether because Kuchikata et al. teach that it is a suitable surfactant

and since Iwasaki teach that polyoxyalkylene alkyl ethers are combined with activating agents such as monoethanolamine in glyphosate formulations.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danielle Sullivan whose telephone number is (571) 270-3285. The examiner can normally be reached on 7:30 AM - 5:00 PM Mon-Thur EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Johann R. Richter/
Supervisory Patent Examiner, Art Unit 1616